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ABSTRACT

This report presents a case study concerning the accomplishments of the Kansas City (Missouri) specialized magnet schools that were created to cure the low academic achievement of minority students and eliminate the racial isolation that existed. The plan sought to dramatically improve the facilities and programming of the city schools, the expected results of which were to be an increase in the academic achievements of minority students and the attraction of White students from the suburbs. The study reveals only modest gains both in academic achievement and desegregation resulting from the plan. The strongest evidence for increased academic improvement was confined to the elementary schools. Considerable progress was made in the redistribution of the existing student pool and interracial exposure, but the attraction of new White students into the district was hard to judge. Based on these findings and others, the report recommends greater efforts by the courts in addressing the issue of long-term maintenance needs before implementing large-scale facility improvements. There is also the need to provide explicit indicators of educational achievement and to make court-ordered resources contingent on achieving certain academic goals. Finally, future goals of magnet schools should be confined to enhancing educational quality for disadvantaged minority youth rather than being a tool for desegregation. (GLR)

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MONEY, CHOICE AND EQUITY IN KANSAS CITY

Major Investments with Modest Returns

by

Alison Morantz

with a foreword by Gary Orfield

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April, 1994

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Money, Choice and Equity in Kansas City
Major Investments with Modest Returns

Foreword

The Kansas City school desegregation plan represents an extreme case of one popular type of desegregation remedy. During the decades of debate about desegregation approaches, many critics of mandatory plans have often said it would be more effective to simply give extra money to segregated minority districts to make the urban schools so good that they would attract whites back to the city and also hold onto middle class minorities. After the Federal District Court rejected the effort of civil rights lawyers to win a desegregation plan that would have integrated students from the predominantly white suburbs with the predominantly minority city, the court instead ordered the implementation of an all-out effort to produce desegregation though choice and magnet schools. This immediately increased school spending in the central city to the level of the most elite suburban communities in the state. The U.S. Supreme Court upheld the lower court ruling, thereby allowing the judiciary to order the most expensive educational remedy ever won in a federal court proceeding.

In contrast to almost all U.S. central cities, Kansas City now has the newest, most elaborate school buildings and the most extraordinary special schools and programs in the state. Since Kansas City had the unique opportunity to implement virtually any kind of magnet and choice it could dream up with almost no funding limit (at least during the first seven years), it offers as pure a case as possible of the power of unlimited choice to solve the problems of segregation and educational inequity in a large urban community.

Alison Morantz' study shows that the record of accomplishment under the plan, while promising, has been limited. Students are somewhat less segregated, by some measures, than they would have been without the plan. But transfers into the magnets from the suburbs have been very small and the city's African American students remain concentrated in schools with a small minority of whites. In fact, under the desegregation standard for the city, a school that is about three-fourths black is considered perfectly integrated even though there is a large majority of white students in the larger urban - or metropolitan - community. In other words, from a metropolitan perspective, Kansas City's "integrated" schools would be considered intensely segregated minority schools. City students have no access to high achieving suburban schools. The significant accomplishments have still failed to change the basic structure of the region's educational separation and inequality.

This study is one in a series of reports from the Harvard Project on School Desegregation. In our recent study, *Still Separate, Still Unequal*, we reported that there was no evidence that the efforts to target compensatory dollars on segregated inner city schools had produced substantial gains for the minority students who were offered those programs in place of desegregation. In some cases, inequalities persisted or worsened. In this study, the Project turns to a much larger intervention that relies on vast sums of money and the popular devices of choice and magnet programs to produce both desegregation and educational

breakthroughs without mandatory student reassignments. No court is likely to give any community a more unrestricted opportunity to explore the possibilities of this approach.

If simply funnelling large amounts of money and choice into a system can produce large educational gains, we should see them in Kansas City. But in her study, Alison Morantz finds that there have been some apparent educational gains, but that they have basically followed overall national trends and are likely not evidence of an educational breakthrough.

The story is a disappointing one for me, since I appeared as the final witness for plaintiffs, summarizing the case in federal court in Kansas City more than a decade ago. It was the most exhausting and contentious trial that I have ever witnessed. Much more recently, I appeared to offer evidence on the positive developments during the hearings on the renewal of the plan. In studying 15,000 pages of trial transcript and many of the exhibits submitted to the court during the trial of the case, I was convinced that the racial structure of schooling and neighborhoods in the greater Kansas City area was strongly related to a history of intentional action that produced segregation and racial inequality throughout the 20th century. The federal courts have now agreed that the rights of the city's African-American children were seriously violated for many generations, but the money and the choices offered to these students have produced neither produced substantial gains nor changed the basic system of racial stratification. The principal beneficiary so far has been the school district, whose resources have increased enormously, at least for a time. I think that the African American students in the city have not yet received an adequate remedy for the harm that was inflicted on their community. The courts must supervise this remedy much more carefully and insist on real results or a better plan.

This study's findings of limited results from huge investments is compatible with several recent major national studies revealing the difficulty of achieving large changes through compensatory education or choice. The large review of the major federal compensatory program, Chapter I, prepared for congressional debates on the extension of the largest federal education program, produced no real evidence of educational gains. This review also found that disadvantaged students in schools with high levels of concentrated poverty performed much more poorly than did disadvantaged students in schools that had less poverty.

Clearly, it is much more difficult to substantially improve education for disadvantaged children than we had hoped. My reading of the research is that highly structured systemic interventions such as the Success for All programs developed by researchers at Johns Hopkins University show the most promise. More radical reforms such as San Francisco's "reconstitution" efforts, which allow a school to start from scratch with a new principal, staff, and program, should also be considered. The ironic thing, for those seeking an easier and more educationally beneficial result from civil rights litigation, is that there is more evidence of benefits from desegregation than there are from the major alternatives that have gained popularity and positive publicity in recent years. The alternatives to desegregation have proved not only costly, but complicated to implement. Those who expect easy answers to deeply rooted social problems are always likely to be disappointed.

A reading of Alison Morantz's carefully documented study should suggest that achieving more will require stronger oversight. A court order, the key to the state treasury, and a good monitoring committee have not been enough. Achieving greater educational equity is likely to take long-lasting, intensive intervention from the court. The schools are not a self-healing system and further surgery from the outside may be required.

The most devastating outcome would be if the court were to abandon, rather than redirect, the remedy at this stage of the game. As this study points out, that would leave the city school district with a vast set of court-ordered schools and programs it could not afford to operate. The resulting discouragement and despair in a heavily burdened district with shrinking resources would make a mockery of the promise to remedy the history of inequality for the African American students who would still be confined to the city system. The challenge is to accomplish real improvement and, at the same time, gradually move the district away from unproductive expenditures and unsustainable programs. Just stopping now sacrifice potential gain from a vast investment.

The plaintiffs did not ask for this remedy. The plaintiffs originally asked that segregated minority students in the city be given access to the already effective white schools in the suburbs so these students could share the resources and the education in the far more affluent parts of metropolitan Kansas City. In retrospect, it may be informative to systematically compare the results of the Kansas City approach to those followed in Louisville, Indianapolis, and Wilmington, where the courts ordered city-suburban desegregation with very little extra money and a limited use of choice. For example, in Kansas City in 1991-1992, no African American student attended a school in which a majority of students were white. In contrast, 93 percent of African Americans in metropolitan Louisville and 92 percent of the African American students in the largest of the new districts created from the metropolitan Wilmington merger were in majority white schools that year.

Gary Orfield
April, 1994

EXECUTIVE SUMMARY

Money, Choice and Equity in Kansas City
Major Investments with Modest Returns

Since 1987, educational leaders in Kansas City, Missouri have presided over an unparalleled educational experiment that has funneled more than $1.2 billion into the creation of specialized magnet schools. This controversial court-approved plan was billed by proponents as the cure for the low academic achievement and racial isolation that had plagued the district for decades. By dramatically improving facilities and programming with extra money, the plan's supporters said, academic achievement among minority students would improve and white students from the suburbs would be attracted to the city schools. This report from the Harvard Project on School Desegregation, *Money, Choice and Equity: Major Investments with Modest Returns*, concludes that the more than one billion dollars poured into these efforts produced only modest gains in both desegregation and academic achievement.

The findings are particularly relevant because since the 1980s, voluntary magnet schools have been an attractive option for school districts, many of whom hoped to avoid the political problems associated with mandatory school assignment plans. The Kansas City remedy is an important lens in this regard because it is the most comprehensive program of this type in the nation. The remedy is the most extreme case to data of using money and educational choice to remedy historical segregation. *Money, Choice and Equity'* s central findings suggest that policy makers, educators and the courts should be much more cautious in promising what the programs will be able to accomplish.

This case study contains three principal conclusions. First, the history of the remedy shows that comprehensive voluntary magnet programs can carry heavy political costs. Second, voluntary magnet schools are not powerful enough to attract and retain enough white students from the outlying suburban areas to significantly reduce the high degree of racial segregation in the city. Third, while the most recent data from the school district show some small, but promising, gains, the many millions spent have yielded little conclusive evidence that achievement has improved any more than a modest degree

Background and History

The Kansas City program, though a contemporary school desegregation solution, emerged from historical trends and events that can be traced back more than four decades. After the Supreme Court, in *Brown v. Board of Education*, declared intentionally separate schools to be "inherently unequal" the state of Missouri still failed to take any action to end the intentional racial segregation in its public schools. In the absence of state enforcement, Kansas City officials purposely perpetuated their segregated educational system through a variety of measures.

In 1976, the federal government threatened to cut off the district's aid if the district failed to prove that it was not responsible for existing racial segregation in the city schools. The city did produced a desegregation plan in response to the threat. But the battle did not end there. The school board subsequently filed a lawsuit in federal court arguing that since the city schools were already 65 percent black, merely shuffling the dwindling white population would fail to create lasting racial integration. In its lawsuit, the school board sought to widen the pool of available whites by mandating that white students from the suburbs participate in its mandatory desegregation plan. At the inception of the case, Judge Russell Clark, forced the school district to switch sides from plaintiff to defendant, since he anticipated that the district would be found guilty of constitutional violations. A local civil rights lawyer, on the behalf of city schoolchildren, became the plaintiff in the case. The school board, as defendant, cooperated with plaintiffs as "friendly adversaries" toward the common goal of integrating the district. In arguing for a metropolitan remedy, the plaintiffs used demographic and historical data in an attempt to show that the state and local governments worked in tandem to steer African-Americans from the suburbs to the increasingly black inner-city with the tacit and overt cooperation of suburban government officials.

However, in spite of the enormous evidence presented, Judge Clark concluded that plaintiffs had not proved suburbs liable for the segregation in the city, and the Appeals Court upheld the ruling. This is when the magnet remedy emerged.

This loss sent plaintiffs and school leaders back to the drawing board to find a remedy for the racial isolation in the school district. The magnet plan was chosen, participants in the case said, because it seemed the only viable way to attract white students back into the system. With the court's approval, the school district and the plaintiff's lawyer in 1986 began consulting with experts in order to develop a comprehensive magnet school plan to convert every senior high school, every middle school and about half the elementary schools into specialized magnet themes by the 1991-92 school year. The state and school district, the court ruled, would shoulder the huge cost of the plan. One of the most unusual aspects of the plan is that it forced the judge in the case to nearly double local property taxes within the district. The plan, now six years old, has its share of supporters and detractors. The future of the program is uncertain, partly because the court never addressed the issue of future funding. Some observers say the money is just not there to support the schools over the long run. In March, 1993, Judge Clark rejected the school district's proposal for a 10-year extension of the magnet plan, saying that the request "included extravagant expansion of the magnet component" without adequate justification for spending. Judge Clark also criticized the district for failing to identify the magnets that had been unsuccessful. Meanwhile, there is mounting political pressure to resolve the costly desegregation remedy.

What Are the Results?

Academic Achievement

There is no independent evaluation of the district's magnet school programs. This forces investigators to rely on school district data about the programs' results. Educational achievement data, as measured by standardized tests, is promising in some respects but inconclusive. The strongest evidence for dramatic improvement seems to be confined at the elementary grades. Meanwhile, preliminary analysis of comparative data on nationally-normed tests suggests that while there has been an absolute increase in performance, it is unclear how students would compare to current national norms. Meanwhile, statewide criterion-referenced tests provide no evidence that the district's performance is improving compared to the state as a whole. Finally, analysis of attendance and persistence to graduation rates has not revealed any clear positive trends since the implementation of the remedy.

Desegregation

With respect to desegregation, the evidence is mixed. The plan has made considerable progress in achieving at least one of its court-specified goals, redistribution of the existing student pool. Measures of interracial exposure have been increased significantly. With respect to the second goal of the remedy, however, attracting new white students into the district, it is hard to judge the remedy a success. The percentage of minority students in the district has continued to climb, although perhaps at a slower rate than otherwise would have occurred. The district has argued in court that even if the best it has done is to slow the rate of white attrition, then this is nonetheless a significant achievement when compared to national trends. In many of the eleven districts surrounding the KCMSD, the rate of racial change from 1982 to 1991 has been more dramatic than in the KCMSD, with sharper climbs in minority enrollment. It has also been argued that elsewhere in the country, comparable school districts experienced much sharper increases in minority enrollment during the same period.

Even if the district could prove conclusively that it had significantly slowed the trend of white flight, this finding pales in comparison to the obvious fact that the school district could still not be considered well integrated on any reasonable measure since 75 percent of the students there are African-American. The magnets have simply failed to produce the type of desegregation that plaintiffs and defendants originally sought - and likely would have achieved - with a metropolitan remedy.

Policy Recommendations

It is crucial for judges to consider the long-term implication of any remedy prior to its implementation. This case installed new facilities on a scale so immense that the district will never be able to maintain them alone. Because the court had not examined the remedy from a long-term perspective, this problem did not become apparent until five years after the program began. In the future, courts should address the issue of long-term maintenance at the outset of the case. Otherwise, districts may one day have multi-million dollar educational facilities rotting for lack of necessary maintenance funds.

Second, courts need to provide explicit indicators of educational achievement and should make court-ordered resources contingent on achieving certain academic

goals. Any independent monitoring panel should have explicit powers and expectations.

Finally, voluntary magnets, when used alone, are simply not powerful enough to overcome economic and demographic trends of racial isolation of the inner city. From this perspective, the most appropriate goal for magnets is not to desegregate but to enhance educational quality for disadvantaged minority students. But unless courts hold school districts accountable for educational outcomes, it seems magnets will fail to even make good on the rejected "separate but equal" mandate struck down 40 years ago in *Brown v. Board of Education*.

(end executive summary)

INTRODUCTION

On Wednesday, December 9, 1992, thirty newly elected Missouri state legislators toured Central High School, the showpiece of the Kansas City, Missouri, School District (KCMSD), as part of three-week tour of state-funded facilities. As part of a court-ordered desegregation plan, the school district had converted most of its schools into "magnets" with special curricular themes and state-of-the-art facilities. The most expensive and well-publicized of the magnets, $32 million Central High School, was designated as a "Classical Greek and Computers" magnet and had been completed only months before the state legislators' visit.

"The first thing they showed us was the swimming pool," recalled Greg Canuteson, a representative from Liberty, an affluent suburb north of Kansas City. "And of course [the school principal, who led the tour] described it as a 'natatorium.' " Canuteson said the fifty-meter, Olympic-sized pool was the only one of its kind within the Interscholastic League (the athletic league of which KCMSD is a part). As the tour proceeded through the gymnasium and the weight training room, Canuteson recalled, the principal described the school's special dietary regimen tailored to athletes. Full-time staff, she explained, included a weight trainer, a diving instructor, a Russian fencing instructor, and a gymnastics coach. Rounding out the tour, the legislators were ushered through a special room reserved for gymnastics, a fully-equipped robotics laboratory, an indoor track, and a special wrestling facility. For its computer theme, the school offered 800 terminals to its 1,200 students.[1] Meanwhile, the district cited falling suspension rates, dramatically lower student mobility and course failures, and rising test score achievement as among the positive educational results of the unique magnet theme.[2]

The Kansas City desegregation remedy is the most extreme case to date of using enormous educational resources to correct the residual effects of past racial discrimination. Kansas City was given what most educators can only dream of: vast economic resources with which to take on the challenge of making urban education work. Through the intervention of the federal district court in *Jenkins v. Missouri*, more than $1.2 billion was funneled into the Kansas City, Missouri, School District (KCMSD) between 1987 and 1993. The court approved world-class magnet school facilities on the grounds that improving educational quality would also help achieve desegregation. Feeling himself compelled by legal precedent, the judge who decided the case intervened in a fashion perceived as radical by supporters and critics alike. To fund the costly educational improvements, Judge Russell G. Clark assessed new taxes on district residents, triggering cries of "taxation without representation." Meanwhile—and largely due to its own incompetence—the state of Missouri was forced to fund the lion's share of the remedy. This action generated intense resistance among voters statewide who resented the disproportionate allocation of scarce state dollars to an urban, mostly-minority district. Nevertheless, when the Supreme Court reviewed the case in April of 1990, it essentially upheld the power of the judiciary to fund the remedy through a property tax increase, even without the consent of the district's voters.[3]

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[1]Greg Canuteson, phone interview with author, March 2, 1993.

[2]Dr. Mary Esselman, KCMSD Research Office, April 15, 1994.

[3]Missouri v. Jenkins, 495 U.S. 33 (1990). In fact, the Supreme Court affirmed the ruling with the caveat that instead of ordering the property tax increases himself, Judge Clark should have instructed the school district to

The judge viewed the extraordinary expenditures as necessary to create an attractive menu of "distinctively different" magnet schools. Each magnet, the theory went, would contain a set of unique, world-class educational facilities to lure white parents from within and beyond the school district boundaries. Unlike the remedy in neighboring St. Louis, the plan had no mandatory components: transfers between the KCMSD and adjacent suburbs were encouraged but never enforced.[4]

Five years after the plan took effect, it was mired in political controversy. Touted as the solution to both poor achievement and racial segregation, the plan achieved only modest advances in both categories. Using the Kansas City remedy as a case study, this chapter argues that comprehensive, voluntary magnet remedies create a unique and formidable set of implementation problems with which the judiciary is ill-equipped to cope. As tools for desegregation, magnets alone do not appear to be powerful enough to reverse or even halt the tide of white flight. As vehicles for educational improvement, even the most ambitious and comprehensive magnet remedies may accomplish little without vigilant monitoring and enforcement.

HISTORICAL BACKGROUND AND HISTORY

The state of Missouri has long been an amalgam of historical crosscurrents from North and South. The confluence of regional trends is especially prominent in the development of the public school system. As was typical in the South, the state constitution historically required separate schools for whites and blacks.[5] Like the North, however, districts were established to serve local constituencies, with no attempt to make district boundaries match county lines.[6] Six weeks after the *Brown* decision was handed down, the Missouri attorney general left each school district to decide "whether [it] must integrate."[7] For decades after racial integration became the law of the land, the state ceded all responsibility for enforcement to city and county governments.[8] By 1980, the state of Missouri had been found guilty twice by the federal courts of having helped perpetuate segregation.[9]

In the absence of state enforcement, Kansas City officials, like their counterparts across the state, employed a variety of measures to perpetuate the segregated educational system. Attendance boundaries were redrawn to minimize interracial contact. "Red-lining"—not loaning to prospective minority home-buyers—and "racial steering," in which Realtors influence minorities to move into segregated neighborhoods, were common and served to maintain segregated housing. Between 1950 and 1970, 67,000 whites left the Kansas City Missouri

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do so. The reprimand was a matter of procedure rather than substance; the property tax itself was upheld narrowly by a 5-4 vote, and the Supreme Court also affirmed the scope and content of the remedy.[3]

[4]In the St. Louis plan, as the result of a settlement agreement, the suburban districts of St. Louis agreed to participate in a two-way transfer plan, whereby white students could transfer into inner-city magnets, and minority students who wished could transfer from city schools into outlying district schools. Meanwhile, a mandatory reassignment plan within the St. Louis district, which had been established earlier, was continued. Thus participation was "mandatory" for the suburban districts but not for individual students. (Adams v. United States, 620 F.2d 1277 (8th Cir.)

[5]Arthur Benson [plaintiffs' lawyer], unpublished paper, 1.

[6]Ibid.

[7]Ibid.

[8]Ibid., 3.

[9]Adams v. United States, 620 F.2d 1277, 1280-81 (8th Cir.), and United States v. Missouri, 363 F.Supp. 739, 746-47 (E.D. Mo. 1973)

School District (KCMSD) and were replaced by black incomers totaling 64,000. [10] Whites were moving not only to smaller, mostly white districts within city boundaries, but also across the Missouri-Kansas state line.

The turning point came in 1969, fifteen years after *Brown*. This was the last year in which a majority of the school district's enrolled students were white (although a majority of the school district's *residents* remain white to this day), and also the last year in which city voters approved an educational bond measure. Despite four instances since 1986 in which the district has registered a slight annual increase in white enrollment, the percentage of African-Americans students in the district has climbed dramatically to its current level of 75 percent.[11] Meanwhile, district voters have rejected educational levies 19 times. In June of 1977, the Missouri Department of Elementary and Secondary Education lowered the KCMSD's state classification from AAA to AA status, a rating which reflected the declining quality of educational facilities and resources.[12] By 1985, only a few elementary schools of the 50 in the KCMSD were performing at or above the national norms in reading and mathematics.[13] According to later court records, "substandard conditions" such as "health and safety hazards, educational environment hazards, functional impairments, and appearance impairments" were rampant.[14] "The conditions at Paseo High School," the court subsequently noted, "[were] such that even the principal stated that he would not send his own child to that facility."[15]

In 1976, the KCMSD—then 65 percent African-American—came under the scrutiny of the Office of Civil Rights of the U.S. Department of Health, Education and Welfare (HEW). In a highly publicized federal hearing, HEW threatened to cut off federal aid unless the district could prove that it was not legally responsible for segregation. In response to HEW's threat, Kansas City's Board of Education established a Community Task Force on School Desegregation to develop a plan to comply with HEW's demands.[16] In the end, the Task Force chose to adopt so-called "Plan 6C" under which a 50-50 racial balance in most schools would be achieved through the maintenance of several all-black schools.[17] In the ensuing six months, the KCMSD and HEW waged an all-out legal and public relations battle over the validity of Plan 6C. Meanwhile, HEW continued threatening to withhold federal funds.

Although Plan 6C took effect in September, 1977, a process with much more far-reaching historical consequences was taking place behind the scenes. The board-appointed Task Force concluded that in a district that was already 65 percent black, merely redistributing the existing student pool would fail to achieve significant interracial exposure. Several experts on the panel endorsed a "metropolitan" plan, which would have included two-way student transfers between the inner city and the mostly white surrounding suburbs. Only a mandatory busing

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[10] *Kansas City Star*, January 6, 1976, A3.

[11] In four academic years, 1986-7, 1988-9, 1990-91, and 1991-92 the percentage of non-minority students slightly increased.

[12] *Kansas City Star*, June 7, 1977, A3:1.

[13] Memorandum Opinion, Judge Russell G. Clark, U.S. District Court No. 77-0420-CV-W-4, June 14, 1985.

[14] *Jenkins v. State of MO*, 672 F.Supp. 400 (W.D.Mo. 1987), 403.

[15] Ibid.

[16] *Kansas City Times*, October 1, 1976, A2: 3. Sue Fulson, interview with author, August 26, 1992.

[17] *Kansas City Times*, December 6, 1976, A1: 2, A8 : 1.

plan of this type, the experts argued, would achieve an appreciable racial balance and halt the spiral of urban decline. Yet since a metropolitan plan would incorporate students from beyond the KCMSD's jurisdiction, the school board could not order such a broad plan on its own initiative. To do so would require the court's intervention.

Two days before submitting Plan 6C to placate HEW and maintain federal funding, the school board decided to put its plan for metropolitan desegregation into action. On May 26, 1977, the school board filed suit in federal court against 18 school districts in Kansas and Missouri, the federal government, and the states of Missouri and Kansas, asking for a metropolitan desegregation remedy.[18] The case was turned over to Judge Russell Clark. A Democrat from rural Missouri, Judge Clark was assigned the Kansas City desegregation case just three months after he was appointed to the federal bench in July 1977.[19] Preliminary hearings lasted a full year, from 1977 to 1978.

One of Clark's first actions was to force the Kansas City School District to switch sides. Though it had been positioned by its board as a plaintiff in filing the initial suit, Clark named the district as a defendant, anticipating that the KCMSD would be found liable for constitutional violations. At the request of several school board members, a local, private civil rights lawyer, Arthur Benson, agreed to represent the plaintiff schoolchildren. The NAACP Legal Defense Fund, a leading civil rights litigation group, later contributed substantial legal and financial support. Although it was now positioned as a defendant in the case, the school district worked together with the plaintiffs over the next decade to sustain the case throughout the arduous process of trial and appeals. Thus the early participation of the school district resulted in a curious alliance, plaintiffs and defendants working together as "friendly adversaries" toward a common goal of integrating the ailing district.

This special partnership between the plaintiffs and the school district is less surprising when one considers that both parties shared a strong interest in infusing badly-needed funds into the dilapidated district. Adopting a standpoint of cold economic realism, one might hypothesize that the plaintiffs' and school district's joint attempt to desegregate the district was really just a ploy to obtain badly-needed funds from the state, which had underfunded the district for decades.[20] There appears to be little evidence, however, to support this interpretation. There is no question that both parties sought to rejuvenate the district through the implementation of a desegregation remedy. *Any* desegregation remedy almost certainly would have included new monies for capital improvements and *Milliken II* educational programs. However, if the original goal was simply to obtain as much money from the state as possible, a metropolitan remedy would not have been the most promising strategy. A comprehensive magnet remedy would have been a far more lucrative desegregation method. The fact that the district and plaintiffs originally proposed a metropolitan plan, rather than a comprehensive magnet remedy, strongly undermines this "cynical realist" view of their unique partnership.

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[18] *Kansas City Times*, September 1, 1977, B4 : 1.

[19] *Kansas City Times*, September 23, 1987, A9:1.

[20] In 1993, a state judge found that the state of Missouri's system of financing education statewide violated the Constitution of Missouri. The KCMSD was a plaintiff-intervenor in the suit, and was found to be one of the districts harmed by the inequities of the system. (See Committee for Educational Equity v. State of Missouri, NO. CV 190-1371CC, and Lee's Summit School District R-VII v. State of Missouri, No. CV 190-510CC).

In submitting a metropolitan suit to the federal district court, the KCMSD plaintiffs carefully crafted their argument to fulfill the Court's *Milliken I* provision on suburban liability.[21] The case developed by the plaintiffs and KCMSD attempted to demonstrate that the suburbs were not only "substantially affected by", but also helped cause, the constitutional violations of the state of Missouri. Using an array of demographic and historical data, the plaintiffs argued that the state and local governments worked in concert to steer African-Americans away from the suburbs and into the mostly-black inner city, with the tacit and sometimes overt cooperation of suburban authorities.

Elsewhere, some courts have accepted evidence on these grounds as sufficient to fulfill the plaintiff's burden of proof with respect to *Milliken I*.[22] But Judge Clark relied on a more narrow interpretation of *Milliken*. He dismissed the plaintiffs' argument on the grounds that he did not believe they had found a "smoking gun" proving that the suburbs had directly caused segregation. When appealed to the Eighth Circuit, Judge Clark's decision was narrowly upheld by a one-vote margin. In his dissenting opinion, Chief Judge Lay argued that Judge Clark's decision had been premised on a "misunderstanding of *Milliken v. Bradley*" and that "the district court thus erected an improper proof burden for the plaintiffs to overcome."[23]

Judge Clark himself conceded that he had had considerable latitude on the question of suburban liability. He speculated that had he decided to hold the suburbs liable, the Eighth Circuit "probably would have affirmed me."[24] In the absence of what he viewed as a direct violation, then, it was the judge's own discomfort with applying coercive measures—in this case interdistrict mandatory reassignments—that led to his decision. Although still defending the legal basis for his ruling, Judge Clark admitted that the initial ruling made the task of desegregation far more difficult and costly:

> Based upon hindsight it would have been much much much easier to integrate the Kansas City schools if I had kept them [the suburban districts] in... So it would not have been necessary to come up with a lot of these plans, and with a lot of the capital improvements... I could have ordered some of the Kansas City school children transferred to the suburban districts, and vice versa...the very minute I let those suburban school districts out, I created a very severe problem for the court and for myself, really, in trying to come up with a remedial plan to integrate the Kansas City Missouri School District.[25]

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[21] *Milliken v. Bradley*, 94 S.Ct.3112 (1974) at 3122. As the result of this ruling, suburbs could only be forced to participate in metropolitan busing plans if the plaintiffs could prove that they had either caused, or were subtantially affected by, the segregation of the inner city.

[22] David Tatel, phone interview with author, February 22, 1993. See, for example, *Morrilton School Dist. No. 32 v. United States*, 606 F.2d 222,228 (8th Cir.1979) (en banc) for a case in which the 8th Circuit Court of Appeals rejected a district court's similarly limited interpretation of *Milliken*, and found that school districts which were not constitutional violators could be included in an interdistrict remedy where the effects of the unconstitutional actions of another party (here, the state) were felt in those school districts.

[23] 807 F.2nd 657 (8th Cir. 1986), 695.

[24] Judge Russell G. Clark, interview with author, September 2, 1992.

[25] Ibid.

The real problem in Kansas City, one typical of most American cities, stemmed from decades of white flight which left the school district predominantly black. This meant, of course, that no amount of student reassignment within the district could produce full desegregation. In releasing the suburban districts from responsibility, Judge Clark admitted, he gave away the most powerful tool for overcoming these demographic trends:

> Well, it's obvious, and I'll use the term, that the more salt you have, the more white you can turn the pepper. And without any salt, or with a limited amount of salt, you're going to wind up with a basically black mixture. And so that was where—once I let the suburban districts out—where I found myself with the Kansas City Missouri school district.[26]

After the failed attempt to win a metropolitan plan, the plaintiffs reconsidered their options and decided to propose a comprehensive voluntary magnet plan. The magnet plan was chosen, explained Benson (the plaintiffs' attorney) as the only viable way to attract non-minority students back into the system:

> We had lost the truly widescoped mandatory plan that we were seeking... so then we looked at our options: well, how do we achieve desegregation in a district that is 75 percent minority? Well, the only way to do that is if we can get the suburban white kids back involved in our plan.... So if we are going to do that voluntarily, what will it take to get white kids from the suburbs to come to our schools, remembering that our schools are decrepit, they're underfunded, the class sizes are huge, the classbooks are outdated? We concluded that what we needed to do was restructure the educational system and improve it...[but] we still wouldn't be able to get them to come from the suburbs unless it was different from the suburbs....so we realized we had to make them not only nearly as good as the suburban districts, we also had to make them special...distinctively different. And so that sort of led us to magnet schools.[27]

With the judge's approval, the plaintiffs and school district lawyers began to research the use of magnet schools as a desegregative tool elsewhere in the country. The educational inequity of magnet plans that had been established elsewhere soon became a matter of grave concern. Benson found that magnet plans typically created a "two-tiered system" in which resources and educational gains would be concentrated in magnet schools, while inferior quality and growing minority isolation characterized the remaining traditional schools. The only way to surmount this problem, the plaintiffs and school district experts concluded, was to "magnetize" all schools in the district and thereby avoid the potential inequity.

Throughout the following year, the school district and the plaintiffs' counsel began working on a comprehensive magnet school plan which would convert every senior high school, every middle school, and about one-half of elementary schools in the KCMSD into magnet theme schools by the 1991-92 school year. The idea was that world-class facilities and unique educational offerings would impart a high-

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[26]Ibid.

[27]Arthur Benson, interview with author, August 7, 1992.

profile visibility to the magnet schools. This prominence, in turn, would enhance the district's "marketability" to non-minority parents and help attract white transfers.

Legal precedent would have allowed Judge Clark to order a smaller plan. As he acknowledged in his 1986 court order, "[plans which] magnetiz[e] only a limited number of schools in a district...have been approved by the Eighth Circuit Court of Appeals and the United States Supreme Court."[28] Yet despite these established precedents, Clark chose to implement the proposal of the plaintiffs and the KCMSD, which was unmatched in scope and magnitude. Judge Clark indicated that his decision was based on the desire to avoid the inequity of a two-tiered educational system and insure that there were "enough magnets to pretty much entitle every student that wanted to go to a magnet, the right to attend a magnet."[29] As stated in the 1986 court order, the magnet themes "would provide a greater educational opportunity to all KCMSD students."[30] Judge Clark's firm commitment to educational improvement for all district students, then, compelled him to implement a daring magnet plan far more comprehensive than plans that existed elsewhere.

Although the school district was positioned by the court as a defendant, it always worked closely with the plaintiffs to promote the magnet plan. In contrast, the state of Missouri has always staunchly opposed the plaintiffs' remedy. The governor was virulently opposed to both the metropolitan and magnet plans proposed by the plaintiffs. Ironically, however, the attorney general's litigation strategy helped cement the plaintiffs' case. Even though the Eighth Circuit had already held the state of Missouri liable for segregation and discrimination in two other federal cases, the attorney general refused to concede the state's liability. According to Benson, the state's total refusal even to admit any wrongdoing—especially given the overwhelming evidence that the state perpetuated, even enforced, separate and inferior schools for black children—began to alienate the judge after the outset of the trial.[31] Judge Clark himself corroborated this view by characterizing the state's policy of "total opposition" as highly counterproductive and politically motivated.[32]

Even once the state's liability had been established, the attorney general's strategy helped insure the installation of the comprehensive magnet remedy proposed by the plaintiffs and the KCMSD. At the time of the magnet trial, the claim that the magnets would be powerful enough to reverse the tide of white flight was a highly questionable one. For example, Dr. Christine Rossell of Boston University, one of the nation's leading *advocates* of voluntary magnet remedies, said that there was no credible evidence to support this assumption. "They [in the KCMSD] have gone way beyond what any research would support," she said, "there is no way they're going to get all those whites to come into the school district.... You know if I had testified I simply would have said 'Look, you're going to get no more than at most a thousand whites [the approximate number of white students who transferred into urban magnets in the St. Louis case], and that is an optimistic

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[28]Order, November 12, 1986, Russell Clark.

[29]Judge Russell G. Clark, interview with author, September 2, 1992.

[30]Ibid.

[31]Arthur Benson, interview with author, August 7, 1992.

[32]Judge Russell G. Clark, interview with author, September 2, 1993.

estimate.' "[33] Thus the state's failure to offer any expert testimony challenging the basis of the claim that the remedy would significantly increase white enrollment may be seen as a crucial oversight.

The state's next crucial decision, cited as a tactical error by all of those interviewed except the assistant attorney general, was failing to offer a scaled-down alternative to the comprehensive magnet proposal. The state's legal representatives may have been constrained by their superiors in the state executive branch, who may have been tempted to pursue politically popular strategies even if they might drain the state treasury. Even after Judge Clark approved *immediate implementation* of the magnet school concept, the state continued to protest the judge's decision, instead of offering a smaller-scale, more cost-effective magnet alternative. Committed to a comprehensive plan and lacking a credible alternative, then, Judge Clark accepted the school district's plan to magnetize all high schools, all middle schools, and half of elementary schools in the school district.

In 1986, once Judge Clark had accepted the full-scale magnet plan, the focus of litigation shifted. The question was now how to finance the plan. Judge Clark specified that the state and district would share each set of costs in a ratio varying from roughly three-fifths/two-fifths to three-fourths/one-fourth, respectively, depending on the type of improvements being ordered. Moreover, to ensure that the funding would be guaranteed, he made the state and the school district "joint and severally liable" so that if one party was unable to pay its share of the costs, the other party would have to make up the difference. The problem with this financing structure was readily apparent. The school district, with its current budget, could not pay its two-fifths share. The KCMSD's operating budget was woefully inadequate. The district had failed to pass a school levy since 1969, in part because state law required more than a simple majority for the passage of bond issues and local property tax increases above $3.75 per $100 of assessed valuation. Moreover, the State enacted a variety of additional tax measures which further impeded the district's ability to maximize its local tax revenue.[34] Unless some new source of local funding were found, the state would end up as the "deep pocket" financing not only its own specified contribution, but also the district's court-ordered share.

Meanwhile, however, the costly magnet plan was taking shape. On his order of September 15, 1987, Judge Clark approved the expenditure of $265 million for "the renovation and construction of approximately 72 schools and six other facilities through the fall of 1996." [35] The plan required the closure of eighteen school facilities and the construction of seventeen new ones.[36] Needless to say, these provisions were costly indeed—the quarter-billion-dollar figure reflected only the capital expenditures (i.e., building construction and renovation). Additional costs for magnet instruction and programming were to be calculated separately.

In the text of the 1986 order, Judge Clark urged the KCMSD to seek new funding sources, so the full financial burden of the remedy would not be shifted to the state of Missouri. In 1986 and 1987, the district followed Clark's order and

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[33]Dr. Christine Rossell, phone interview with author, March 2, 1993.

[34]Jenkins by Agyei v. State of Mo., 855 F.2d at 1312 (8th Cir. 1988). A State judge recently found that the state of Missouri's method of allocating funds to its school districts is inequitable and violates the state constitution. The KCMSD was specifically cited as one of the districts harmed by this system. (Committee for Educational Equity v. State of Missouri, No. CV 190-1371CC; Lee's Summit School District R-VII v. State of Missouri, No. CV 190-510CC)

[35]Order, Sept. 15, 1987, Russell G. Clark.

[36]Ibid.

introduced three ballot measures that would have raised taxes to pay the district's share. All three levies were rejected by district voters. In April of 1987, a state representative from the only affluent corridor of central Kansas City, Annette Morgan, introduced a bill in the state legislature that would enable Kansas City to finance its share of the costs through three new taxes—a sales tax, an income surcharge, and an earnings tax. "I was laughed off the floor," Morgan recalled.[37] By 1987, then, the plaintiffs and the school district had exhausted every traditional means of generating new local taxes.

In a historic ruling, Judge Clark noted the failure of these conventional methods and unilaterally imposed two tax measures to finance the school district's share of the costs. Property taxes within the school district were nearly doubled. A new tax—a 1.5 percent surcharge on Missouri State Income Tax—was instituted for anyone, including non-residents, who worked or did business within the KCMSD.[38]

Once again, the attorney general's legal strategy failed to prevent the court from making substantial claims on the state treasury. Combined, the property tax and the far more lucrative income tax surcharge generated all of the district's share of costs for the 1987-88 year.[39] Under the joint and several liability clause, however, if these new taxes were thrown out on appeal, the state would be forced to make up the difference. A "successful" appeal by the state, in other words, would drain more dollars from the state treasury. Nevertheless, the attorney general appealed all of Judge Clark's new taxing measures. On August 19, 1988, the Eighth Circuit Court of Appeals upheld all of the substantive components of the remedy and also the property tax, but rejected the lucrative income tax surcharge.[40] The local property tax thus became the sole source of generating local funds. In 1990, the U.S. Supreme Court affirmed the Circuit Court's ruling.[41]

PART I: THE INPUTS

Costs continued to mount as construction proceeded. As of March 31, 1993, the total cumulative cost of the desegregation plan was approximately $1.15 billion. Of this amount, the State's court-ordered share was approximately $586 million, and the district's share was approximately $564 million. To fund an increase in salaries, the rate was increased 24 percent to a total value of $4.96 per $100 assessed valuation in July, 1990.[42] As anticipated, the local property tax levy did not generate the district's full share of the costs. Through the joint and several liability clause, the State paid an additional $105 million above and beyond its court-ordered share. Thus of the $1.15 billion total, the State paid about $691 and the district paid about $459.[43]

The state uses two different measures to calculate per-pupil costs, "current" and "total" expenditures. "Current expenditures" includes instruction and support services (e.g., teaching, custodial, and security staffs), but excludes some types of

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[37]Annette Morgan, interview with author, July 13, 1992.

[38]Order, Sept. 15, 1987, Russell G. Clark, p. 21.

[39]Annette Morgan, interview with author, July 13, 1992.

[40]*Kansas City Star*, August 19, 1988, A1 : 1.

[41]*Missouri v. Jenkins* , 495 U.S.33 (1990)

[42]*Kansas City Star*, July 26, 1990, A1 : 1.

[43]KCMSD Exhibit 8, received by the District Court on June 2, 1993.

costs such as capital improvements and capital outlay.[44] "Total expenditures," as the term implies, is an aggregate figure including all spending by the district.[45] Figures 1 and 2 compare KCMSD expenditures from 1985 to 1992 to expenditures in St. Louis; Clayton and Ladue (both suburbs of St. Louis, among the wealthiest districts in the state); the average of the eleven suburban districts in the Kansas City metropolitan region named in the plaintiffs' original suit; the state of Missouri (excluding St. Louis and Kansas City); and Shawnee Mission, Kansas.[46]

According to both measures, per-pupil costs in the KCMSD expanded dramatically between 1985 (just prior to the court order) and 1992. Current expenditures per eligible pupil (P.E.P.) increased by more than two-and-a-half times in the KCMSD, from $2990 to $7819. Meanwhile, the statewide average grew by only about 50 percent (from $2470 to $3683), and the 11-district average increased by only 54 percent (from $2573 to $3972). When the *total* expenditures per enrolled pupil data are analyzed, similar trends emerge. Kansas City's total spending per enrolled pupil more than tripled during this period (from $3464 to $11,513), while the state average rose by only 56 percent (from $3030 to $4723) and the 11-district average increased by 65 percent (from $3173 to $5223).[47]

When KCMSD per-pupil costs are compared directly to the statewide average, the disparity is also striking. In 1985, prior to the desegregation plan, KCMSD per-pupil expenditures were 10 to 21 percent higher than the statewide average, depending on which measure was used.[48] From 1986 to 1992, however, the gap between KCMSD spending and the statewide average steadily widened. In fiscal year 1992, KCMSD current expenditures per enrolled pupil were more than twice the statewide average ($7819 compared to $3683) and total expenditures per enrolled pupil were almost two-and-a-half times the statewide average ($11,513 compared to $4723). Roughly similar, although slightly smaller, disparities emerge when one compares per-pupil costs in the KCMSD to those of the eleven-district metropolitan region.

This dramatic, unbroken trend was broken in 1993, when total per-pupil expenditures in the KCMSD fell sharply, from $11,513 to $8917. Current

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[44]Current expenditures do not include Capital Outlay, Debt Service, Adult and Community Education. (Note (1) of Table 2, "Summary of Financial Data of School Districts by County—1991-92 (Six-Director Elementary and High School Districts)"

[45]According to the KCMSD Research Office, using the number of "eligible" pupils to calculate per-pupil costs is an overestimate because it only includes students who actually attend classes. In the district's view, expenditure per *enrolled* pupil is a fairer measure, since expenditures allegedly do not decrease if a child is absent. For this reason, the latter measure has been used for all districts in the sample.

[46]Kansas City expenditures presented in Figures 1 and 2 are adjusted so that transportation costs specifically for desegregation are not included in the calculations. Also, because figures are based on enrollment rather than average daily attendance, full-day kindergarten students (counted as only half-students through 1993 by the Department of Elementary and Secondary Education) are weighted equally with other KCMSD students.

[47]"Current Expenditures per E.P." and "Total Expenditures per E.P.," computer printout from DESE, supplied by Tim Jones, Desegregation Services.

[48]This discrepancy, it should be noted, should not be construed as evidence that the district received ample funding before the remedy—on the contrary. Urban districts typically receive higher per-pupil funding than the state average, because they invariably confront a much more formidable set of socioeconomic obstacles than the rural and suburban districts of which the state average is primarily composed (higher crime and pregnancy, lower attendance and retention, higher capital maintenance costs, etc.) In fact, for fiscal year 1985, the other major urban district in the state of Missouri—St. Louis—spent 20% more than Kansas City in current expenditures per E.P. and 16% more than Kansas City in total expenditures per E.P. (Some of this discrepancy was probably due to the fact that St. Louis settled a desegregation suit of its own in 1982, and the settlement agreement provided for additional expenditures. St. Louis was also receiving large state assistance from a series of desegregation orders beginning in 1980.)

expenditures declined to a much smaller degree, from $7819 to $7158. Given this recent decline in KCMSD spending, the disparity between KCMSD and statewide spending has also declined. For fiscal year 1993, total expenditures per enrolled pupil were 79 percent higher in the KCMSD than for the state as a whole, while current expenditures were enrolled pupil were about 90 percent higher.

By 1988, KCMSD costs began to resemble per-pupil spending in St. Louis and two of St. Louis' wealthy white suburbs, Ladue and Clayton. Since 1985, spending in these three districts had been the highest in the state of Missouri. By 1989, Kansas City surpassed St. Louis' expenditure level and has continued to do so through 1993. Meanwhile, taken as a whole, KCMSD expenditures since 1989 have been roughly similar to expenditures in Ladue and Clayton, with its cost figures usually falling somewhere between those for the two suburbs.

Figure 1:
Adjusted Current Expenditures Per Enrolled Pupil

District	FY 85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	FY93
Kansas City	2990	3432	3964	4974	5774	5986	7052	7819	7158
St. Louis	3814	4116	4744	5151	5410	5979	6221	6729	6640
Clayton	5237	6151	6170	6050	6547	7293	7359	7956	8112
Ladue	4763	4892	5182	5556	5911	6564	7118	7416	7380
11-Dis. Avg.	2573	2826	3023	3249	3524	3730	3937	3972	4102
*State Avg.	2470	2665	2848	3082	3295	3488	3647	3683	3760
**Shawnee Mission, KS	---	---	---	---	---	---	4896	5063	5462

*State average calculated for all districts in the state of Missouri except the KCMSD and St. Louis districts.
**Shawnee Mission, Kansas, a wealthy mostly-white suburb of Kansas City, was named by the defendants in the original metropolitan suit. The Kansas State Board of Education did not calculate per-pupil costs for individual districts until the 1990-1991 academic year. The two figures above represent per-pupil costs for the 1990-91, 1991-92, and 1992-93 academic years, respectively. (Per-pupil expenditure varies according to which measure of enrollment is used. The figures shown, which use average daily attendance to measure enrollment, are the highest estimates of per-pupil costs.) Data provided by Gary Watson, Research Assistant, Division of Fiscal Services and Quality Control, Kansas State Board of Education, September 28, 1993 and April 15, 1994.

Notes:
1. All information taken from the State and District Profiles of Missouri Public Schools. Provided by Tim Jones, Director of Desegregation Services, Missouri Department of Elementary and Secondary Education.
2. Ladue and Clayton are suburbs of St. Louis, Missouri.
3. "11-district average" refers to the 11 suburban districts surrounding the KCMSD named as defendants in the plaintiffs' original suit: Raytown, Center, Lee's Summit, Hickman Mills, Grandview, Independence, North Kansas City, Oak Grove, Blue Springs, Liberty, and Fort Osage. Average was calculated by adding district-wide per-pupil expenditure figures for eleven suburban districts and dividing total by eleven.

Figure 2:
Adjusted Total Expenditures Per Enrolled Pupil

District	FY85	FY86	FY87	FY88	FY89	FY90	FY91	FY92	FY93
Kansas City	3464	4056	5329	6594	7623	8966	11,346	11,513	8917
St. Louis	4367	4658	5336	5792	6491	7680	7910	8777	8817
Clayton	6002	6965	6932	7025	8466	10,749	9048	9562	9363
Ladue	5520	5524	5724	6178	6698	7473	8090	7920	8049
11-Dis. Avg.	3173	3436	3599	3845	4353	4738	4920	5223	5264
*State Avg.	3030	3287	3473	3781	4102	4385	4603	4723	4974
**Shawnee Mission, KS	---	---	---	---	---	---	5319	5614	6283

*State average calculated for all districts in the state of Missouri except the KCMSD and St. Louis districts.
**Shawnee Mission, Kansas, a wealthy mostly-white suburb of Kansas City, was named by the defendants in the original metropolitan suit. The Kansas State Board of Education did not calculate per-pupil costs for individual districts until the 1990-1991 academic year. The two figures above represent per-pupil costs for the 1990-91 and 1991-92 academic years, respectively. (Per-pupil expenditure varies according to which measure of enrollment is used. The figures shown, which use average daily attendance to measure enrollment, are the highest estimates of per-pupil costs.) Data provided by Gary Watson, Research Assistant, Division of Fiscal Services and Quality Control, Kansas State Board of Education, September 28, 1993 and April 15, 1994.

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It is interesting to consider whether KCMSD per-pupil spending for its magnet schools has been similar to national trends. Unfortunately, this type of comparison is not possible for two reasons. First of all, the district does not calculate per-pupil costs separately for magnets and non-magnets. Second, reliable national data were not found which would facilitate such a comparison. The only study which addresses the issue of magnet school costs on a national scale was published by Kent Chabotar in 1989, using data from 1981.[49] Using a stratified random sample of school districts across the country, Chabotar compared spending in 106 magnets and 588 nonmagnets costs for 1980-81 and 1981-82, of which about 23 percent in each category were secondary schools. Chabotar found that although magnet secondary schools cost more per student than nonmagnets, magnet elementary and intermediate schools actually cost *less* than their non-magnet counterparts. Most of the difference, he found, could be explained by "educational economies of scale": magnets' higher fixed cost, when combined with relatively low enrollment at the secondary level, led to higher per-pupil costs; but relatively high enrollment in elementary and intermediate magnets outweighed disparities in fixed costs and thus led to lower per-pupil expenditures. At the high school level, where enrollment did *not* increase, average magnet expenditures in Chabotar's study

[49]Chabotar, Kent John. "Measuring the Costs of Magnet Schools." *Economics of Education Review*, 1989, Vol. 8, No. 2, pp. 169-183, 174.

exceeded average nonmagnet expenditures by no more than 23.9 percent for both sample year. [50]

Although Chabotar's study is severely limited in scope and applicability, it does seem to suggest that elsewhere in the country, magnet schools are not necessarily very costly as compared to nonmagnet schools. It is to be hoped that future studies of this sort will enable more direct comparisons between KCMSD magnet costs and magnet costs nationwide. As of yet, however, the most that can be said of per-pupil spending in the KCMSD is that it is very high compared to state and local averages, and that since 1989 it has ranked among the top two or three districts in the state in terms of per-pupil spending. Judged comparatively in historical, local, and statewide contexts, then, per-pupil costs in the KCMSD were moderately high from 1987-88 and have been very high since 1988-89.

Where is the money going? Cumulative figures which break down the $1.15 billion (as of March, 1993) into capital, salary, and program expenditures give a very rough, if somewhat deceptive, approximation of the distribution of desegregation funds.[51] Costs related to improving instruction and programming account for about $503 million—or 44 percent—of the total desegregation budget.[52] Teacher salary increases account for another $96 million, or 8 percent.[53] About $435 million, or 36 percent of the total budget, has gone to the acquisition, construction, renovation, and maintenance of new school facilities.[54] Transportation expenditures totaled about $99.5 million (8.5 percent). The remainder could be attributed to various costs such as interest and debt service.[55]

In the view of some local critics, the distribution of desegregation funds has overemphasized capital expenditures and costly magnet programming, with too little attention paid to attracting a high-quality teacher pool.[56] To evaluate the

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[50]Ibid.

[51]It should be noted that this breakdown of cost is deceptive in two ways. First, the court provided for only minimal salary increases until 1990, when much larger increases were granted. Thus comparing aggregate program, capital, and salary costs ignores the fact that the latter component has only been fully in effect for three years, while the other two components have been in effect since the inception of the plan. Secondly, comparing "fixed" costs for capital improvements to "variable" costs for programs and salary increases overlooks the fact that capital facilities are designed to last for decades, while salary and program expenditures do not have comparable longevity.

[52]Figure obtained from Dan Estel, Interim Director, KCMSD Budget and Fiscal Planning Department, April 14, 1994.

[53]State's Payment Under Joint and Several Liability as of March 31, 1993: Salary Account.

[54]$400 million for construction and major renovations from "State's Payment Under Joint and Several Liability as of March 31, 1993: Capital Account. Exhibit Ward 2, submitted 5/18/93. Additional $35 million (for additional maintenance costs attributable to magnet facilities such as extra utilities, security, custodial staff, athletic facilities, square footage, etc.) estimated by Roger Lee, Director of Budget, KCMSD, September 13, 1993. $435 total for capital-related costs derived by combining these two figures.

Tim Jones, who handles Kansas City for the DESE's Department of Desegregation Services, . asserted in a phone interview that at least $12 million of the $35 million maintenance amount was paid for through the desegregation budget. (September 14, 1993) (It is unclear what fraction of the $23 million remainder is part of the desegregation budget and which is part of the regular operating budget.) Thus the total amount of desegregation expenditures that can be attributed to capital construction and improvements is at least $412 million, 35% of the total cost, and may in fact be closer to $435, or 38%.

[55]Figure obtained from Dan Estel, Interim Director, KCMSD Budget and Fiscal Planning Department, April 14, 1994.

[56]Among those persons interviewed who were critical of the allegedly extravagant expenditures for capital improvement: Elister Dewberry (attorney for the teacher's union), interview with author, August 13, 1992. Michael Fields (Assistant Attorney General for the state of Missouri), interview with author, August 27, 1992. Mark Bredemeier, (primary spokesperson for Landmark Legal Foundation, a conservative think-tank and

strength of this claim, we must examine the court's allocation of funds in more detail. According to the legal counsel for the teacher's union, *Jenkins v. Missouri* was the first desegregation remedy in the country to include salary increases for district teachers.[57] The court approved a teacher salary package in the original 1987 order. In 1990, the parties reached a settlement which continued salary increases through the end of fiscal year 1992. When the settlement expired, however, the issue of whether and how much to raise teachers' salaries was hotly contested by the state, KCMSD, and teachers' union. The state charged that the 1990 increase had had "virtually no effect on increasing the quality of new hires or decreasing the quality of staff who left the District" and therefore that salaries should be rolled back to 1986-87 levels. The AFT argued that salaries commensurate with the projected average of urban districts nationwide were crucial to retaining and attracting high-quality teachers. The KCMSD, citing the district's "dire fiscal constraints," staked out the middle ground and endorsed a "roughly competitive" compensation plan which was below the national urban average, yet substantially above 1986-87 levels.[58]

In his 1992 order and again in 1993, Judge Clark affirmed that "to improve the desegregative attractiveness of the KCMSD, the District must hire and retain high quality teachers, administrators and staff."[59] He also ruled that pay raises should be viewed "in the context of how KCMSD teachers salaries actually compare[d] with the national urban average teacher salaries" since "the KCMSD most assuredly competes in the national urban market."[60] Nevertheless, in both rulings Judge Clark declined to endorse the AFT's salary plan, and instead approved the KCMSD's more modest recommendations. Although he acknowledged that salaries would not match but only be "roughly competitive" with the national urban average, he justified this result by stating that the AFT's proposal was "simply not economically feasible" in light of the KCMSD's "current financial crisis."[61]

Comparative data reveals that salaries in the KCMSD have been competitive with—but not uniformly higher than—salaries offered by nine suburban districts in the greater Kansas City area (including districts in neighboring Kansas). Although minimum and maximum salaries in the KCMSD have exceeded the local averages for all three teacher education levels (B.A., M.A., and Ph.D.), the disparities are small and have tended to decrease with time. In only four cases (B.A. and M.A. maxima in 1990-91, and B.A. minimum and maximum in 1991-92) did the KCMSD offer a higher salary than all nine local suburbs. By 1992-93, three suburbs—Blue Valley, MO, Kansas City, KS, and Shawnee Mission, KS—offered salaries exceeding that of the KCMSD in at least three of the six categories.[62]

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public interest law firm), interview with author, July 21, 1992. Richard Nadler (community activist), interview with author, July 20, 1992.

[57]Scott Raisher, Jolley, Walsh, & Hager, P.C., legal counsel for American Federation of Teachers Local 691, interview with author, September 24, 1993.

[58]Order, Filed June 25, 1992, Judge Russell Clark, p. 7.

[59]Ibid., p. 15.

[60]Ibid., p. 15; and Order, filed June 30, 1993, Judge Russell Clark, p. 8.

[61]Order, Filed June 30, 1993, Judge Russell Clark, p. 9; and Order, Filed June 25, 1992, p. 15.

[62]1992-93 salary schedules for nine local suburban districts—Blue Springs, Blue Valley, Center, Grandview, Lee's Summit, North Kansas City, Olathe, Shawnee Mission, and Kansas City, Kansas—collected by the AFT Local 691, and compared with the 1992-93 KCMSD salary schedule. Data obtained from Scott Raisher, Jolley, Walsh, & Hager, P.C., legal counsel for American Federation of Teachers Local 691.

Data comparing the KCMSD pay scale to nationwide urban averages strongly substantiate the AFT's claim that KCMSD salaries lag behind national and regional norms. To calculate the average for urban districts, the AFT used the salary schedule used by the Department of Defense (DOD) to pay teachers employed overseas. The DOD schedule contains the average salaries paid teachers in all urban U.S. school districts (about 170) with populations of 100,000 or more.[63] Figure 3 compares the minimum and maximum salaries in the KCMSD with the comparable DOD figures, for teachers at three degree levels: bachelor's degrees, master's degrees, and Ph.D.'s.

One flaw which might be perceived in this data, however, is the following: the DOD data includes all districts in the country with more than 100,000 residents, regardless of region. The cost of living in Kansas City in particular, and in the midwestern region in general, is generally lower than in the U.S. coastal regions. Thus the DOD average, one might argue, may contain an "upward skew" when compared to midwestern pay scales. Presumably to preempt this criticism, the AFT also presented a second set of survey data (for 1989-90 through 1992-93) compiled by Lee & Burgess Associates, comparing salaries in the KCMSD with a specially-selected set of twelve "targeted" urban districts. These districts shared four characteristics: they were local competitors for KCMSD employees, were located in an urban area, contained desegregation plans with well regarded magnet school components, and resembled the KCMSD in enrollment size. Figure 4 summarizes these data:

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[63] March v. United States, 506 F.2d 1306, 1317-18 (D.C. Cir. 1974). (Interpreting the Defense Department Overseas Teachers Pay and Personnel Practices Act, 20 U.S.C. Sections 901, et seq.).

Figure 3:
DEPARTMENT OF DEFENSE DATA COMPARED TO KCMSD:
MINIMUM / MAXIMUM TEACHER SALARIES FOR THREE DEGREE LEVELS

Year	KCMSD	DOD Urban Avg.	$ Difference	% Difference
1986-87				
BA	17,000 / 23,388	18,345 / 28,425	1,345 / 5,037	7.9 / 21.5
MA	17,754 / 27,744	19,670 / 32,630	1,916 / 4,886	10.8 / 17.6
Ph.D.	18,828 / 28,833	22,235 / 36,315	3,407 / 7,482	18.1 / 25.9
1987-88				
BA	18,000 / 25,450	19,270 / 29,910	1,270 / 4,350	7.1 / 17.0
MA	19,890 / 30,510	20,640 / 34,240	750 / 3,730	3.8 / 12.2
Ph.D.	24,156 / 36,000	23,470 / 38,270	(686) / 2,270	-2.8 / 6.3
1988-89				
BA	18,000 / 25,560	20,270 / 31,390	2,270 / 5,830	12.6 / 22.8
MA	19,890 / 30,510	22,385 / 35,825	2,495 / 5,315	12.5 / 17.4
Ph.D.	24,156 / 36,000	24,500 / 40,180	344 / 4,180	1.4 / 11.6
1989-90				
BA	18,200 / 25,844	21,395 / 34,145	3,195 / 8,301	17..6 / 32.1
MA	20,111 / 30,849	23,570 / 38,870	3,459 / 8,021	17.2 / 26.0
Ph.D.	24,424 / 36,400	25,745 / 43,595	1,321 / 7,195	5.4 / 19.8
1990-91				
BA	22,215 / 31,545	22,465 / 35,980	250 / 4,435	1.1 / 14.1
MA	24,548 / 37,654	24,760 / 40,910	250 / 3,256	0.9 / 8.6
Ph.D.	29,813 / 44,430	27,055 / 45,840	(250) / 1,410	-9.3 / 3.2
1991-92				
BA	22,215 / 31,545	23,130 / 36,645	915 / 5,100	4.1 / 16.2
MA	24,548 / 37,654	25,515 / 41,920	967 / 4,266	3.9 / 11.3
Ph.D.	29,813 / 44,430	27,900 / 47,195	(1,913) / 2,765	-6.4 / 6.2
1992-93				
BA	22,215 / 31,545	23,670 / 38,490	1,455 / 6,945	6.5 / 22.0
MA	24,548 / 37,654	26,145 / 43,670	1,597 / 6,016	6.5 / 16.0
Ph.D.	29,813 / 44,430	28,620 / 48,850	(1,913) / 4,420	-4.0 / 9.9

Note: Based on KCMSD salary schedules for 1986-87 through 1992-93 and DOD salary schedules for 1986-87 through 1992-93.

Figure 4:
LEE & BURGESS DATA COMPARED TO KCMSD:
MINIMUM / MAXIMUM TEACHER SALARIES FOR THREE DEGREE LEVELS

	KCMSD	Sample		KCMSD	Sample
1989-90			1991-92		
BA	18,200/25,844	21,440/34,177	BA	22,215/31,545	23,091/37,180
MA	20,111/30,849	23,252/39,230	MA	24,548/37,654	24,936/43,699
Ph.D.	24,424/36,400	25,747/44,699	Ph.D.	29,813/44,430	27,530/47,617
1990-91			1992-93		
BA	22,215/31,545	22,276/36,548	BA	22,215/31,545	24,137/38,705
MA	24,548/37,654	24,263/43,640	MA	24,548/37,654	26,082/45,447
Ph.D.	29,813/44,430	26,686/47,037	Ph.D.	29,813/44,430	28,818/49,533

Note: Data compiled by Lee & Burgess Associates for the KCMSD Desegregation Monitoring Committee. Surveyed districts were: Buffalo, NY; Cincinnati, OH; Columbus, OH; Denver, CO; Indianapolis, IN; Memphis, TN; Minneapolis, MN; Norfolk, VA; Pittsburgh, PE; Rochester, NY, St. Paul, MN; and Seattle, WA.

Although the disparities are not as dramatic as those between the KCMSD and the DOD urban averages, the Lee & Burgess survey does substantiate the AFT's claim. Since 1989-90, even when compared to other urban districts similar in size and cost-of-living—all of which are using magnets to further desegregation goals—the KCMSD has offered a pay scale noticeably below the norm. (Salaries for teachers with Ph.D.'s, a notable exception, have been consistently higher than average.) The local teacher's union president, Norman Hudson, claimed that the disparity between expensive capital improvements and modest salary raises had become a primary source of teacher resentment. "They see all this money coming in here—you can build a $32 million high school to replace Paseo [High School]," he said. "But when it comes time for a pay raise, there's no money."[64]

PART II: MONITORING AND OVERSIGHT

The justification for emphasizing magnet facilities and programs, according to Judge Clark's 1987 order, was to improve minority opportunity and desegregate the district:

> [The court] is convinced that the students who are presently enrolled in the KCMSD are entitled to a vindication of past denial of constitutional rights now.... First, the carefully chosen magnet themes would provide a greater

[64]Norman Hudson, interview with author, July 22, 1992.

> educational opportunity to all KCMSD students.... The Court also finds...that the proposed magnet plan is so attractive that it would [sic] draw non-minority students from the private schools who have abandoned or avoided the KCMSD, and draw in additional non-minority students from the suburbs.[65]

Beyond this general statement of purpose, however, the court did not specify any criteria for "success" or "failure." The remedy included a complex array of facilities and educational programs tailored to the special theme of each magnet school. Yet Judge Clark indicated no standards of academic achievement—test scores, attendance, dropout rates, etc.—that were required to improve under the plan, nor did he specify any numerical targets for desegregation. In the previous report released by the Harvard Project on School Desegregation, it was shown that the federal courts frequently have failed to specify educational goals when ordering educational remedies.[66]

In August, 1985, the court appointed a ten-member Desegregation Monitoring Committee (DMC) to serve as the "arm of the court" and handle day-to-day operations. In its final form, the DMC included four subcommittees, each addressing a separate facet of the plan: desegregation, budgeting, education, and voluntary interdistrict transfers.[67] The District provides the DMC with monthly and bimonthly reports, copies of all Court filings, Board actions and agendas, task force minutes, and additional items requested by individual subcommittees. Committee members are paid by the court to consult with district officials and evaluate the district's performance, and have also been empowered by the court to hire additional auditors and consultants. With respect to both educational improvement and desegregation, however, the DMC has primarily relied on the data generated by the district in order to assess the progress of the plan. "I do not believe that the DMC in a meaningful way engages in what I call primary source gathering," said Dr. Eugene Eubanks, the DMC chairperson. "We visit schools, we make observations, we generate reports, but we do not administer surveys...We use the district's data in order to gauge their progress in the context of desegregation, and academic improvement as measured by standardized test scores."[68] In the last two years, the DMC has begun to conduct some independent evaluations through the hiring of three independent on-site evaluators, as well as through the services of an independent consulting firm, to evaluate issues such as potential inequities between magnet and nonmagnet schools. However, Eubanks said, "The DMC has not been aggressive in pursuing alternative measures of educational performance,

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[65]Order, November 12, 1986, Judge Russell G. Clark, 3.

[66]"Still Separate, Still Unequal: The Limits of *Milliken II*'s Educational Compensation Remedies," by Joseph Feldman, Edward Kirby, Susan E. Eaton, and Alison Morantz, released by the Harvard Project on School Desegregation, April, 1994.

[67]In the initial court order, Judge Clark recommended a voluntary interdistrict transfer plan, whereby suburban districts would agree to accept KCMSD transfers, and thereby help achieve racial balance within the district. Yet the task of enlisting suburban cooperation was not assigned to any specific party, and no "carrots" or "sticks" were included to enjoin suburban participation. The state, which had worked hard to release the suburban districts from liability at the inception of the case, did almost nothing to encourage suburban districts' participation in a voluntary transfer scheme. By January of 1994, only one district had joined the VIDT scheme, accepting a total of ten students (of which nine were still enrolled as of April, 1994). Thus the VIDT component of the plan, lacking enforcement components, so far has had only a negligible desegregative effect.

[68]Eugene E. Eubanks, interview with author, April 13, 1994.

in addition to standardized tests," or in influencing the particular types of tests that are used by the district.[69]

Meanwhile, the state educational establishment did not play an important role in either the formulation or oversight of the remedy. According to Diane Vaughan, former Director of Desegregation Services for Missouri Department of Elementary and Secondary Education (DESE), the governor and attorney general during late 1980s discouraged DESE from taking an active role in monitoring the plan, and chose to appeal even those components of the remedy of which DESE was in favor.[70] Committed to a policy of blanket opposition, therefore, the state executive branch not only failed to monitor the district's execution of the remedy, but also barred the state educational establishment from doing so, presumably because permitting such involvement might be perceived as a conciliatory gesture.[71]

PART III: THE OUTPUTS

In evaluating just how successful the district has been in achieving its dual goals of educational improvement and desegregation, one must bear in mind that it is in every school district's interest to present statistics which showcase its record in a favorable light. It is possible that the testing measures chosen by the district, as well as the types of evaluations performed upon them, have been influenced by the district's vested interest in demonstrating successful outcomes. Even Dr. Charles Allen, former coordinator of testing for the KCMSD, conceded that "in high-stakes testing environments [school district officials] are attempting to show improvement."[72] Nevertheless, in the absence of independent studies of district performance, we must confine our analysis to the data provided by the KCMSD since these are the only data available,

Despite its rising unpopularity in some educational circles, standardized testing is still the leading means of measuring educational performance. The district uses two types of standardized tests which allow comparisons over time, and to other student populations: the Iowa Tests of Basic Skills (kindergarten through grade 8) and the Tests of Achievement and Proficiency (grades 9 through 12), a national, norm-referenced pair of testing instruments; and the Missouri Mastery and Achievement Tests, statewide criterion-referenced tests. The nationally normed ITBS/TAP tests, the centerpiece of the district's testing battery, enable the district to compare ITBS and TAP scores over a variety of groups, years, and cohorts.

Some of these ITBS/TAP comparisons are encouraging. There is some modest but promising evidence that at least at the elementary level, magnet schools may be doing a comparatively better job of educational instruction than their non-magnet counterparts. For example, using "grade equivalents," the district tracked the performance over time of four sets or "cohorts" of students at magnet and non-magnet schools. Magnet students (both minorities and non-minorities) consistently outperformed their non-magnet counterparts in most academic subjects and years. Even adjusting for three variables which could bias the results (minority status, poverty status, and test score in the initial year of the study), the performance gap

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[69]Ibid.

[70]Diane Vaughan, interview with author, January 13, 1993.

[71]Ibid.

[72]Dr. Charles Allen, former KCMSD Coordinator of Testing, phone interview with author, August 25, 1993.

that remained in 1992 was statistically significant in eight out of twelve cases, although small in magnitude.[73]

Another cohort study tracking magnet school achievement at the elementary level—this time focusing on a particular group of magnets, the eight "foreign language immersion" schools—also showed a promising trend. The 1988 kindergarten cohort, the first group of students enrolled full-time in foreign language elementary schools for their entire elementary grades, fluctuated in the earliest grades but by the fifth grade scored well above district averages *and* national norms, with particularly high scores in math.[74] It remains to be seen whether the 1989 and 1990 kindergarten cohorts will duplicate these promising results. Although there is always the possibility of selection bias in magnet school achievement studies, these two cohort studies offer moderate support for the claims that at the elementary level, magnet schools in the KCMSD are offering higher quality instruction than non-magnets, and that foreign language magnet instruction may be achieving exemplary outcomes by both district-wide and national standards.

Analyses of ITBS/TAP data which compare grade-level performance over time, rather than tracking particular cohorts, pose more formidable methodological problems. Comparisons of achievement scores in 1986 and 1992 for grades one through eleven, for example, are superficially encouraging but become difficult to interpret with more detailed analysis.[75] The KCMSD appears to have made considerable strides since 1986, with consistent achievement gains in reading and language (math scores indicate a mixed trend). Yet this is only part of the story. The national norms to which both sets of KCMSD scores are calibrated were generated in 1985 and have not yet been updated.[76] Since 1985, national norms have risen in all three categories for nearly all grade levels.[77] It is unclear whether KCMSD scores will still compare favorably to national norms when the new 1992 tests are implemented. Thus while in an absolute sense, the district does appear to have made definite gains in achievement testing from 1986 to 1992 according to 1985 norms, it is unclear whether the district will be shown to have kept pace with the national trend of rising achievement from 1985 to 1992 when it switches to the newer norms.

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[73]"1992 Reading, Language, and Math Means and Adjusted Means for Four KCMSD Cohorts Based on Analyses of Covariance for ITBS grade Equivalent Scores." KCMSD Research Office. The means were covaried on minority status, 1992 SES, as measured by reduced/free lunch, and test score the first year of the cohort. Significance was determined at the 0.05 level. In reading, the performance gap was statistically significant for all four cohorts and ranged in magnitude from 0.19 years to 0.67 years. In language arts, the achievement gap was significant for only one of the four cohorts (0.32 years). In math, the achievement gaps for three of the four cohorts were statistically significant and ranged in magnitude from 0.28 years to 0.40 years. Because the students enrolled in magnet and non-magnet schools did not do so as the result of a random sampling process (illustrated by the fact that magnet students consistently *began* at higher achievement levels), the covariance analysis and test of statistical significance is not strictly appropriate. For example, even when the test controls for initial test scores, magnet schools may have selected (either actively, through specialized recruitment, or passively, through self-selection) for particular qualities which also facilitate higher test scores and thus could have confounded the data, January 27, 1993.

[74]"Process/Product Evaluation (Summative): Foreign Language Magnet Elementary Schools, 1992-1993. " February, 1994, Matrese Benkofske, Program Evaluator, Evaluation Office, Desegregation Planning Department, KCMSD.

[75] "Math, Reading, and Language Achievement, KCMSD 1986 vs 1992," Defendant's Exhibit KCMSD #34, Submitted to the Court on January 27, 1993.

[76]Interviews with author, KCMSD Research Office, April, 1994.

[77]Table 5.31, "Comparisons of 1992 National Norms with 1988 and 1985 Norms," in Technical Summary I: Riverside 2000, Riverside Publishing Company: Chicago, 1994.

In a separate study, the district has compared 1993 KCMSD percentile ranks (P.R.) on the ITBS/TAP to scores for three reference groups: the nation as a whole, large city schools, and school districts with low socioeconomic status ("low SES"). The district has argued that the fairest reference group may be the low SES group, since a higher proportion of KCMSD students receive free/reduced lunches (and thus may be considered low-income) than in the large city reference group. When compared to "Low SES" norms, KCMSD P.R. scores in 1993 were much higher than the norm for grades K through 5, considerably above the norms for grades 6 through 8, and roughly similar to norms for grades 10 through 12. In contrast, when compared to the large city reference group, KCMSD P.R. averages are only consistently above the norm for grades K through 6. These comparisons are somewhat questionable, however, on two grounds. First of all, it is uncertain to what degree the KCMSD is truly comparable to the "Low SES" reference group. (Riverside, the test publisher which also calculates the norms for the Low SES reference groups, uses different criteria for judging socioeconomic status which exclude rates of participation in free/reduced lunch programs.) Second, as was the case in the earlier comparison data, the norms used for this comparison (1985) are already eight years out of date, and thus comparing KCMSD's *1993* achievement to national reference groups from *1985* contains an important element of bias into the results. It is to be hoped, however, that the district will generate further comparative studies of this sort once new norms have been introduced.[78]

In the past five years, a growing literature has corroborated earlier findings that various flaws in testing design, and in particular the use of outdated norms, can undermine the legitimacy of upward achievement trends in nationally-normed tests.[79] Dr. Charles Allen, former coordinator of testing for the KCMSD, conceded that norm-referenced tests in large school districts like the KCMSD must be evaluated with caution. Echoing the most recent trends in ITBS/TAP norms, he noted that "the nation has been doing better on norm-referenced tests generally [since the late 1970s], and when the norms have been redone nationally, they tend to be a little more difficult with each successive [updating]." Moreover, he suggested that there tends to be "alignment of the curriculum to the test over time, and I would say generally that there's an increase [in test scores] because it is easier to teach to the test." Allen acknowledged that at least part of the KCMSD's rising test score trend from 1986 to 1992 may have been due to teachers' growing familiarity with the outdated tests.[80] Given these possible biases, only when the ITBS/TAP tests are updated and renormed will the issue of educational improvement be adequately resolved.

The second set of standardized tests used by the district are the criterion-referenced Missouri Mastery and Achievement Tests (MMAT), administered

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[78]"KCMSD 1993 Achievement Scores Compared to the Large City Reference Group Norms" and "KCMSD 1993 Achievement Scores Compared to the Low SES Reference Group Norms." KCMSD Research Office, March, 1994. Riverside uses median income levels and median educational attainment to calculate socioeconomic status.

[79]Among the two most prominent research reports documenting potential biases in measurements of above-average achievement are:

"Nationally Normed Elementary Achievement Testing in America's Public Schools: How All Fifty States Are Above Average." Report by Dr. John J. Cannell, 1987.

"Comparing State and District Test Results to National Norms: Interpretations of Scoring "Above the National Average." Robert L. Linn et al, Center For Research on Evaluation, Standards, and Student Testing, January, 1990, pages 3-5.

[80]Ibid.

statewide. The KCMSD administers the MMAT at grades 3, 6, 8, and 10. When comparing annual district test performance to state performance, there are a total of sixteen comparison points (four subject tests at each of four grade levels). For each of the past four years (spring 1990 through spring 1993), district scores have remained from ten to twenty percent below state averages for all sixteen comparison points. Moreover, the gap between district and state averages did not significantly diminish from 1990 to 1993.[81]

A final pair of data related to educational quality are attendance rates and "persistence to graduation" trends. Generally, these data are either inconclusive or appear to exhibit adverse trends. At the elementary school level, average attendance hovered around 93 percent until 1990, but then declined by about 0.5 percent per year from 1990-91 to 1992-93. At the middle school level, daily attendance has not exhibited a clear trend, averaging about 84 percent and alternately fluctuating up and down each year since 1989-90.[82] At the high school level, attendance fell dramatically from 1989-90 (from 80.9 to 71.6), rebounded to 76.7 in 1991-92, and remained relatively stable the following year. Trends in "persistence to graduation," the net percentage of incoming high school freshmen who graduate in four years, are also inconclusive. Persistence to graduation rates began at 62 percent in 1984-85 but declined immediately thereafter to the fifty percent range, where they have since remained (with annual fluctuations). The 1992-93 school year registered a modest upswing (from 43.6 percent to 50.1 percent), but it is unclear whether this short-term rise will turn out to signal a new long-term trend of rising persistence to graduation.[83]

The primary court-specified goal of the remedy is desegregation. The court specified two methods of increasing desegregation within the district: redistributing the existing student pool in such a way as to maximize interracial exposure in individual schools; and augmenting the proportion of white students in the district as a whole. [84] The results of the first method, intradistrict desegregation, is captured in Figures 5 and 6. Figure 5 compares changes in the "exposure index" at each educational level, or the percent white enrollment in a school attended by a typical minority student, for two years: 1985-86 and 1992-93. According to this index, if the district was perfectly balanced, every school in the district would have an interracial exposure index of 25 percent, reflecting the fact that 25 percent of the students in the school were white.

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[81]Data obtained from "District Elementary, Middle, and High School Profiles, 1989-90 through 1992-93," KCMSD Research Office.

[82]Ibid.

[83]Ibid. Data are not based on a true cohort.

[84]Jenkins v. Missouri, 855 F.2d 1295, 1302 (8th Cir. 1987).

Figure 5:
KCMSD Interracial Exposure Index, 1985-86 and 1992-93

	1985-86	1992-93
Magnet Elementary	20.4%	32.0%
Non-Magnet Elementary	18.9%	12.7%
Middle Schools	20.6%	21.6%
High School	17.3%	20.6%
District Overall	19.1%	22.7%

Notes:
- Data obtained from Research Office, KCMSD.
- "Exposure Index" refers to the percent white enrollment in a school attended by a typical minority student.

The chart suggests that the remedy has successfully redistributed the existing student population, slightly increasing the interracial exposure of most KCMSD students (with the notable exception of students at non-magnet elementary schools).

Figure 6, which compares the number of "outlier" schools (i.e., schools whose racial percentages differ significantly from the proportions in the district as a whole) and the percentage of students attending them in 1985-86 and 1992-93, corroborates this interpretation.

Figure 6:
"Outlier" Desegregation Data for All KCMSD Schools

	1985-86	1992-93
Number of 90+ % minority sch's	24	14
% minority students in 90+% minority sch's	47.8	26.8
Number of 50+% white sch's	15	2
% white students in 50+% white sch's	45.2	3.5
% of all students at sch's within 15% of district-level avge	28.0	72.1

Note: Data obtained from Research Office, KCMSD.

Figures 5 and 6, then, suggest that the remedy has enabled the district to redistribute the existing student population in an advantageous way, evening out the racial proportions in individual schools. One might question whether attending a 75 percent minority school instead of a 90 percent minority school really makes an appreciable difference in the education of a minority student. Nevertheless, the

school district's success in implementing this policy has clearly furthered the goal of promoting desegregation to the maximum feasible degree.

When one evaluates the second type of desegregation specified by the court, "to regain some portion of the white students who fled the district and retain those who are still there," the results are much less encouraging.[85] Minority racial isolation has increased since the implementation of the remedy. The district was 73.5 percent minority in the 1986-7 school year, but by 1992-3 had become 74.8 percent minority. The district has argued that the decrease in white enrollment is much smaller than that which would have occurred if the magnet plan had not been implemented. Dr. Mary Esselman, Coordinator of Research for the KCMSD, has estimated what the racial makeup of the district from 1986-87 to 1992-93 would have been in the absence of the desegregation plan. The results of these calculations are summarized in Figure 7. The third column from the left, "Minority %," cites the *actual* percentage of minority students in the district for each academic year. The far right column, "Minority % minus S/P & NM Attrition," shows the district's estimates of what the percentage of minority students in the district *would have been* if the court had never intervened.[86]

Figure 7:
Percent of KCMSD Minority Student Enrollment, 1986-87 Through 1992-93

Year	Actual Minority Enrollment	Minority %	Minority % minus S/P	Minority % minus S/P & NM Attrition
86-87	26,705	73.5%	73.8%	74.3%
87-88	26,257	74.1%	74.6%	75.1%
88-89	26,052	74.0%	75.0%	75.5%
89-90	26,065	74.8%	76.4%	76.9%
90-91	26,207	74.7%	77.3%	77.8%
91-92	26,710	74.2%	77.8%	78.3%
92-93	27,201	74.8%	78.7%	79.1%

"Actual" = Actual KCMSD Enrollment; "minus S/P" = Actual KCMSD Enrollment minus all suburban/private school students; "minus S/P & NM Attrition" = Actual KCMSD Enrollment minus both suburban/private school students and an annualized natural attrition factor for non-minority students.

Source: "Percent of KCMSD Minority Student Enrollment, 1975-76 Through 1992-93," Defendant's Exhibit KCMSD #40, Submitted January 27, 1993.

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[85] Jenkins v. Missouri, 855 F.2d 1295, 1302 (8th Cir. 1987)

[86] The analysis was completed as follows. First, the number of white suburban/private students enrolled in each year of the plan was subtracted from the total number of non-minority students and the total enrollment. Actual white enrollment was used, not percentages. Second, a new minority percent was calculated. Third, the attrition rates were calculated for the seven years of the plan and for the seven years prior to the plan. The difference between the two was applied to the non-minority enrollment for each year and the total enrollment was adjusted to reflect the number of non-minorities subtracted due to the ANAF. Fourth, a new minority percent was calculated (the district's projected racial percentages.)

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The methodology used for these projections is somewhat problematic because is fails to examine the rate at which minority students have entered and left the district in the years prior to and during the magnet plan. Until a more nuanced study is conducted, the most that can be said is that the magnet plan may, to a modest degree, have helped decrease the rate at which white students leave the district.

While the preceding analysis shows actual and projected enrollment trends, it does not address the question: how many nonminority transfer students have actually entered the district since the plan has been in place? Figure 8, "Total Enrollment for S/P Students 1986-87 through 1992-93," charts this trend.

Figure 8:
Total Enrollment for S/P Students 1986-87 Through 1992-93
(Total white transfer students, both new and returning, enrolled in the KCMSD)

1986-87	108
1987-88	218
1988-89	451
1989-90	746
1990-91	1210
*1991-92	1691
1992-93	1768

Source: KCMSD Research Office, April, 1994

*1991-92 was the year in which the last of the magnet school themes were implemented.

Although it is too early to identify a trend with certainty, total white enrollment trends do suggest that the number of white transfers—after climbing sharply from 1988 to 1991—may be beginning to level off.

Since the 1991-92 school year, the district has tracked individual student retention rates from year to year, in order to determine what percentage of transfer students remain in the system for at least one year after their entrance date. The data shows that the rate of non-minority transfer student retention from 1991-92 to 1992-93 was about 66.4 percent across all grade levels, with private school transfers being much more likely to stay than suburban transfers (76.2 percent compared to 63.3 percent, respectively). Retention rates from 1992-93 to 1993-94 were very similar, with an overall suburban/private retention rate of 65.4 percent. Retention rates for those white students *already* in the school system (i.e., those who did not transfer from private or suburban schools) were somewhat higher: 75.6 percent for 1991-92 to 1992-93, and 78.0 percent for 1992-93 to 1993-94.[87]

In light of all the preceding data, what can we conclude about the effectiveness of the Kansas City plan in achieving its twin court-mandated goals of educational improvement and desegregation? Educational achievement data, as measured by standardized tests, is promising in some respects but inconclusive.

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[87] "Non-Minority Retention 1991-92 to 1992-93" and "Non-Minority Retention 1992-93 to 1993-94", KCMSD Research Office, April, 1994.

Analysis of nationally-normed test scores suggests that while there has been an absolute increase in performance for grades K through eleven, it is unclear how students would compare to current national norms. The strongest evidence for dramatic improvement seems to be confined to magnet schools at the elementary level. Statewide criterion-referenced tests provide no evidence that the district's performance is improving, at any level, compared to the state as a whole. Finally, analyses of attendance and persistence to graduation rates do not reveal any decisive positive trends since the implementation of the remedy.

With respect to desegregation, the evidence is mixed. The plan has made considerable progress in achieving at least one of its court-specified goals, redistribution of the existing student pool. Measures of interracial exposure have been increased significantly. With respect to the second goal of the remedy, however, attracting new white students into the district, it is hard to judge the remedy a success. The percentage of minority students in the district has continued to climb, although perhaps at a slower rate than otherwise would have occurred. The district has argued in court that even if the best it has done is to slow the rate of white attrition, then this is nonetheless a significant achievement when compared to national trends. In many of the eleven districts surrounding the KCMSD, the rate of racial change from 1982 to 1991 has been more dramatic than in the KCMSD, with sharper climbs in minority enrollment.[88] It has also been argued that elsewhere in the country, comparable school districts experienced much sharper increases in minority enrollment during the same period.[89]

Whether or not these results are deemed "successful" depends on the viewpoint of the observer. In a recent study, for example, Orfield and Monfort stress the rarity and importance of Kansas City's achievement when compared to the national trends of declining white enrollment in central city school districts.[90] The study notes approvingly that "the extremely costly and elaborate magnet plans offered in Kansas City and sustained by the Supreme Court doubtless slowed the rate of white enrollment decline."[91] In contrast, the DMC has been sharply critical of the district's performance with respect to both educational improvement and desegregation. For example, DMC Chair Eugene E. Eubanks concluded in a report to Judge Clark dated August, 1992, "After seven years, the DMC hoped for and expected better results in both terms of desegregation and academic achievement on the part of the KCMSD. These needed improvements and outcomes at this time have not been adequately realized."[92] For most local observers, it is not merely the educational and desegregative results of the remedy which have determined its success or failure; but these benefits *weighed against the cost* of achieving them.

The Future of *Jenkins v. Missouri*

88"Racial Breakdown of Student Membership of Area School Districts: Percent Black." KCMSD Exhibit 7, Submitted to the Court January, 1993.

89"Desegregation Achieved in Various Urban Desegregation Plans," KCMSD Exhibits 10-12, Submitted to the Court January, 1993.

90"Status of School Desegregation: The Next Generation," Report to the National School Boards Association, by Gary Orfield and Franklin Monfort, 1992.

91Ibid., 24.

92Eugene E. Eubanks, letter to Judge Clark, August 20, 1992—Cover letter of Report of the Desegregation Monitoring Committee for the period July 1, 1991-June 30, 1992.

The future of *Jenkins v. Missouri*, and of the KCMSD magnet system itself, is uncertain. In addition to the absence of specific educational goals, the district court also failed to address the issue of long-term financing. The court did not explore the question of whether the district would one day be able to support the magnet schools on its existing tax base, given the current level of state financing. According to Jewel Scott, who researches the desegregation issue for the Kansas City Civic Council (a powerful business community leadership organization comprised of the CEOs of the city's largest companies), the question of how to finance the district over the long term remains a troubling dilemma. In theory at least, it is possible that the state will substantially increase its contribution to the district's regular (non-desegregation related) operating budget, and that the local property tax levies may be maintained indefinitely. Yet even if both of these sources of revenue were guaranteed, Scott said, without the state's additional court-ordered subsidy "there would still be insufficient funds to operate the district. There still is the issue of how this school district will ever be able to support financially the needs of the students in these schools." Even under the most favorable economic circumstances, she said, the district will face about a $100 million shortfall per year in the next two decades if the state's desegregation funding is withdrawn. [93]

Beginning in 1992, several visible changes took place in the political and legal landscape. First, a new slate of Democratic state executives took office. Several local leaders suggested that the new officeholders might attempt to resolve the desegregation issue through pluralist compromise.[94] As of April, 1994, however, there appeared to be no real progress on this front. In December, 1992, the Eighth Circuit Court of Appeals ruled that the state must actively enlist suburban participation in a transfer scheme; this decision was thought to provide new impetus to the voluntary interdistrict transfer scheme which had floundered since the late 1980s. As of spring, 1994, however, no additional VIDT arrangements had been made. In April, 1994, an "opposition" slate, generally perceived as being critical of the remedy and eager to seek new solutions, was elected by a wide margin to the KCMSD School Board. Several weeks later, Judge Clark tacitly recognized the fact that the district's unofficial desegregation goal of 60 percent minority enrollment in each school had been unrealistic, and increased the target minority percentage to 65 percent.[95]

Second, in March of 1993, Judge Clark rejected the plaintiffs' and the school district's proposal for a ten-year extension of the Long Range Magnet Plan and conversion of the remaining traditional elementaries into magnets. (The DMC had recommended that the court not grant the extension.) Instead, the district court approved only a two-year extension of the plan, and ruled that traditional (i.e., non-magnet) elementary schools would retain their traditional status in order to "protect...choice" for the "significant number of parents and students in the KCMSD" who preferred the "opportunities available in the traditional schools."[96] This rejection put additional pressure on the plaintiffs and the district to show positive results.

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[93]Jewel Scott, phone interview with author, July 29, 1993.

[94]Sue Fulson, interview with author, Dec. 29, 1992. Karen McCarthy, interview with author, December 23, 1992. Jewel Scott, phone interview with author, July 29, 1993. Phil Tate, phone interview with author, March 3, 1993.

[95]*Kansas City Star*, April 19, 1994, B-1 and B-2.

[96]Order, Judge Russell G. Clark, filed April 16, 1993, 19.

For the first time, Judge Clark's 1993 ruling emphasized that the plaintiffs and the school district had failed to adequately address the issues of long-term funding and maintenance. Although commending the district for its willingness to "assume its desegregation obligation over the next ten years," Judge Clark noted that "a glaring omission is a plan by which the District proposes to fund this wonderful school system being built."[97] Acknowledging the district's successes in both desegregation and educational trends, the order states that "the Court has allowed the District planner to dream. The Court then has provided the mechanisms for these dreams to be realized.... However...the Court finds that it is time that the District be subject to a very definite reality check." The plaintiffs' proposal, the order states, "included extravagant expansion of the magnet component" without adequate educational and financial justification.[98] In his ruling, Judge Clark ordered the school district (and encouraged the state) to submit to the Court "an effective method by which the District may fund its share of the programs" by June 30, 1993.

The Court's 1993 ruling also contained a new emphasis on educational accountability. Judge Clark criticized the district for "not [having] appropriately identified the magnets which are unsuccessful" and instructed the District to "eliminate ineffective themes."[99] He ordered the district to "implement a procedure to consistently measure and evaluate the effectiveness of the magnet programs...within the current budgetary constraints."[100] Thus five years into the implementation stage, the court has begun to acknowledge that stronger educational accountability and long-term financial planning are crucial to obtaining the desired results.

POLICY RECOMMENDATIONS

In comprehensive magnet remedies such as that attempted in Kansas City, the court must oversee and enforce a highly complex series of educational reforms. If the court feels that it must implement a remedy of this sort, it is crucial to consider the long-term implications of any remedy *prior to implementation*. In *Jenkins*, the district court installed new facilities on a scale so immense that the district would never be able to maintain them on its own. Yet because the district court had not critically examined the remedy from a long-term perspective, this problem did not become apparent until five years into the implementation phase. To be sure, guaranteeing that a comprehensive magnet plan will be financially self-sustaining after the court's withdrawal is a difficult task. Expensive facilities tend to be expensive to maintain. The typical inner-city tax base is barely adequate to support existing school facilities, let alone a state-of-the-art magnet school system.

Whether or not school districts actually achieve their court-specified goals, a variety of unforeseen contingencies—the death or replacement of the original district judge, new legal precedents, the changing composition of the Supreme Court—may affect the survival of local remedies, sometimes bringing them to an abrupt conclusion. Since 1990, the court has authorized the termination of desegregation remedies under

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[97]Ibid., 3.
[98]Ibid., 13.
[99]Ibid., 14.
[100]Ibid., 22.

certain circumstances. If the pressure builds on courts to end remedies, then it is possible that the remedy will be halted before any meaningful progress can be achieved. For all of these reasons, the court should address the issue of long-term maintenance at the outset of the case. Otherwise, the district may one day face the prospect of multi-million-dollar facilities rotting for lack of necessary maintenance funds.

Because of its minimal impact on desegregation, a purely voluntary, comprehensive magnet remedy (in a racially isolated urban setting) should be seen as an ambitious attempt at educational improvement. Funds should be allocated in such a way as to maximize the quality of instruction. Ensuring that teacher salaries are sufficiently competitive to draw employees from a national, or at least a regional, labor pool, is a promising strategy which has yet to be attempted as part of a desegregation order. Defining the remedy in terms of educational inputs, however, is not enough. The court must also provide strong and explicit incentives for districts to achieve desired educational outcomes and control costs. The judiciary, in short, must not only define "educational improvement," but also must make continued access to court-ordered educational resources contingent on showing progress toward achieving them.

The irony of the comprehensive voluntary magnet remedy is that although it has been used by the courts to fulfill *Brown*'s desegregation mandate, it may in fact help perpetuate the very dual educational system which *Brown* sought to eradicate. Magnets, when used alone, are simply not powerful enough to overcome economic and demographic trends which have increased the racial isolation of the inner city. In this context, the most promising function of magnets is not their effectiveness as a desegregative tool, but their potential for enhancing educational quality for disadvantaged minority youth. Yet unless the courts are capable of holding school districts strictly accountable for educational outcomes, magnets will fail even to make good on the rejected *Plessy* mandate of "separate but equal." If the courts suspend these remedies before they accomplish their goals, even this strategy will become a temporary expedient.